IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

S.B.CRIMINAL REVISION PETITION NO. 204/2005

(Fajalu Rehman V/s Smt. Salma Banoo)

Date of Order : 24/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pavan Deval for the petitioner.
Mr. Talat Bari for the respondent.

BY THE COURT:-

By the instant criminal revision petition under Section 397 r/w 401 Cr.P.C., the petitioner has challenged the order dated 14.2.2005 passed by Additional Chief Judicial magistrate, Deedwana (for short 'the trial court' hereianfter) in Cr. Misc. Case No. 69/2003, whereby the trial court allowed the application filed by the non-petitioner under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short 'the Act' hereinafter).

Heard learned counsel for the parties. Perused the order impugned as also record of the trial court.

The non-petitioner filed an application under Section

3 of the Act before the trial court claiming the articles mentioned in Schedule-A annexed to the application as also the amount of Mehar and monthly allowance of maintenance for the period of Iddat. The trial court allowed the application and directed the petitioner to pay a sum of Rs. 1750/- i.e. the amount of Mehar and monthly allowance of maintenance @ Rs. 500/- per month for a period of three and half months i.e. period of Iddat and to return the articles mentioned in Schedule-A annexed to the petition filed by the non-petitioner.

It is contended by learned counsel for the petitioner that the articles mentioned in Schedule-A, more particulars the jewellery and the garments cannot be said to be with the petitioner. Learned counsel submits that the other articles have also been taken by the non-petitioner herself.

I have carefully gone through the statements of the witnesses more particular the statements of non-petitioner AW-1Salma, AW-2 Begam as also the witnesses produced in defence by the petitioner NAW-1 Mohd. Kasim, NAW-2 Govindram and NAW-3 Fajlu. It appears from the record that the Nikah of the petitioner was contracted with the non-petitioner in the childhood. However, subsequently, there had been a Muklava. At that time, certain articles were given mentioned in Schedule-A attached to the petition in which it is clearly mentioned that item No.1 to Item No.10 were given at the time of marriage/Muklava,

under the Caption "1" articles No. 1 to 10 were given at the time of Muklava, again under the Caption "2" items No.1 to 25 were given at the time of Muklava and lastly under the Caption "3" Items No. 1 to 5 jewellery were given in Muklava. According to learned counsel, these articles like Ring, Necklace, Silver Paijeb, Bangles normally remain with the lady and when the lady goes either to parents house or in relation wear the same. There is no specific allegation by the non-petitioner that she entrusted these jewellery and dresses to the petitioner.

On close scrutiny of the statements of witnesses in my view, the non-petitioner failed to prove entrustment of jewellery mentioned in Caption-3 i.e. jewellery given at the time of Muklava. It has also been stated that a sum of Rs. 30,000/- for constructing a room at Sujangarh was given by grand mother of the non-petitioner. There being no such evidence that grand mother constructed room at Sujangarh. If at all any room is constructed as to on whose land the room was constructed and whether maintained by the non-petitioner, there is absolutely no evidence in this regard. In the circumstances, therefore, the order impugned to the extent directing the petitioner to return the articles mentioned in Caption-3 i.e. gold jewellery, two gold rings, one silver Paijeb, four golden bangles, necklace and four dresses as also cost of Rs.30,000/- of the room alleged to have been constructed cannot sustain and is liable to be set aside to

that extent.

In this view of the matter, the revision petition is partly allowed and the order impugned dated 14.2.2005 to the extent directing the petitioner to return the articles mentioned in Caption-3 i.e. gold jewellery, two gold rings, silver Paijeb, four golden bangles, necklace and four dresses and payment of Rs. 30,000/- cost of room is set aside, however, rest of the order passed by the trial court is maintained. Stay petition also stands disposed of.

(H.R.PANWAR),J.

rp